

APPEAL NO. 020847  
FILED MAY 10, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 12, 2002. With respect to the issues before him, the hearing officer determined that although the appellant (claimant) sustained an injury in the course and scope of his employment on \_\_\_\_\_, and he was unable to obtain and retain employment as his preinjury wage due to that injury for the period from November 1, 2001, through the date of the hearing, he did not sustain a compensable injury or have disability because he failed, without good cause, to timely report his injury to his employer. In his appeal, the claimant challenges the hearing officer's determinations that the claimant did not timely report his injury to his employer and that, as such, the respondent (carrier) is relieved of liability for benefits. In its response, the carrier urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant failed, without good cause, to timely report his injury to his employer. That issue presented a question of fact for the hearing officer. The hearing officer was acting within his province as the fact finder and the sole judge of the weight and credibility of the evidence in deciding to resolve the conflicts and inconsistencies in the evidence against the claimant and in determining that the claimant did not advise the employer within the 30-day notice period that his back injury was work related, which is a necessary element of effective notice. DeAnda v. Home Ins. Co., 618 S.W.2d 529 (Tex. 1980). Nothing in our review of the record reveals that the hearing officer's notice determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The success of the claimant's challenges to the hearing officer's injury and disability determinations is dependent upon the success of his argument that the hearing officer erred in determining that the claimant did not timely report his injury to his employer. Given our affirmance of that determination, we likewise affirm the determinations that the claimant did not sustain a compensable injury and did not have disability in that the carrier was relieved of liability for benefits in accordance with Section 409.002.

Finally, we note that we did not consider the evidence attached to the claimant's appeal which was not admitted in evidence at the hearing. The claimant's attorney states that it came to his attention that he had submitted medical records that were not the claimant's records after the hearing. Such evidence cannot satisfy the requirements of newly discovered such that a remand to consider that evidence would be appropriate. Texas Workers' Compensation Commission Appeal No. 93536, decided August 12, 1993. Nevertheless, we further note that these records do not address the notice issue, which is

the controlling issue in this case and, as such, even if they had been considered they would not have changed the outcome.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN INTERSTATE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**STEVE ROPER  
1616 SOUTH CHESTNUT STREET  
LUFKIN, TEXAS 75901.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Robert W. Potts  
Appeals Judge